

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claims null and void ab initio. CA MC 72940 and CA MC 77315.

Set aside and remanded.

1. Mining Claims: Lands Subject to -- Mining Claims: Powersite Lands
-- Mining Claims: Withdrawn Land -- Mining Claims Rights
Restoration Act -- Withdrawals and Reservations: Effect of --
Withdrawals and Reservations: Powersites

Lands withdrawn for a powersite reservation are open to entry for location and patent of mining claims, with certain exceptions, subject to the conditions in the Mining Claims Rights Restoration Act, 30 U.S.C. § 621 (1982). Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

APPEARANCES: Leslie M. Corriea, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Leslie M. Corriea has appealed from the February 3, 1984, decision of the California State Office, Bureau of Land Management (BLM), declaring the Old Crystal lode mining claim (CA MC 72940) and the Poison Oak lode mining claim (CA MC 77315) null and void ab initio because the land at issue was withdrawn from location or entry and reserved for reservoir sites under an order of withdrawal dated June 8, 1926.

The only authority cited in the 1926 order of withdrawal is the Pickett Act of June 25, 1910, as amended by the Act of August 24, 1912 (Act), ch. 369, 37 Stat. 497, repealed, section 704(a), P.L. 94-579, 90 Stat. 2792 (1976). In Western Nuclear, Inc., 55 IBLA 20 (1981), we held that where an Executive order issued subsequent to the enactment of that Act does not specifically close all lands withdrawn under any authority other than the Act, the said lands are open to exploration, discovery, occupation, and purchase under the mining laws of the United States so far as the same apply to metalliferous minerals. Although the President had the inherent authority to withdraw the

land from all types of location under the mining laws, the text of the order does not support the conclusion that he did so here. Id.

Nevertheless, the historical index indicates that the land was withdrawn pursuant to 16 U.S.C. § 818 (1982) when it was included in Power Site Classification 267 on August 24, 1933. That statute closed such lands to all mineral location, subject to restoration to entry for mining locations by order of the Secretary of the Interior upon recommendation of the Federal Power Commission under section 24 of the Federal Power Act, 16 U.S.C. § 818 (1982) or to location of the claims after August 11, 1955, pursuant to the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1982). Lamar & Christine Burnett, 78 IBLA 349, 352 (1984); Henry Stagnaro, 31 IBLA 357, 361-62 (1977). The Mining Claims Rights Restoration Act, 30 U.S.C. § 621(a) (1982) provides:

All public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites shall be open to entry for location and patent of mining claims [emphasis added] and for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands under applicable Federal statutes: * * * And provided further, That nothing contained herein shall be construed to open for the purposes described in this section any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act [16 U.S.C. 791a et seq.] or other Act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Energy Regulatory Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once.

[1] Thus, lands withdrawn for a powersite reservation are open to entry and the location and patent of mining claims, with certain exceptions, subject to the conditions set forth in the Act partially quoted above. BLM's failure to consider the effect of this Act on the withdrawal makes it necessary to set aside its decision and remand the case for further consideration. Robert D. Upton, 38 IBLA 90 (1978). There is no evidence of any Secretarial restoration order under section 24 of the Federal Power Act.

We note that another notice of withdrawal was issued by the Federal Power Commission on June 27, 1963, for project 2179. The notice stated that a "completed application for license" was filed but nothing in the record of this appeal establishes that a license was ever issued. Nor do we find any other indication in the record that the conditions for closing the land for mineral entry specified in 30 U.S.C. § 621(a) (1982) have been met. A mere application for a license has no such effect. See Sam Rosetti, 15 IBLA 288, 81 I.D. 251 (1974).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded for further action consistent with this opinion.

Gail M. Frazier
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

